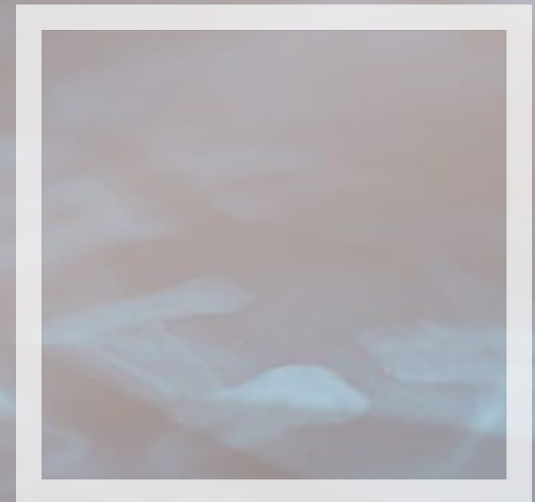
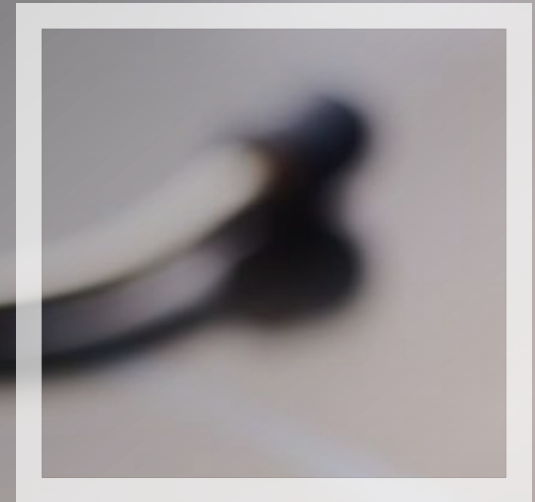


# Telemedicine: Laws & Policy Trends

July 26, 2022



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# AGENDA

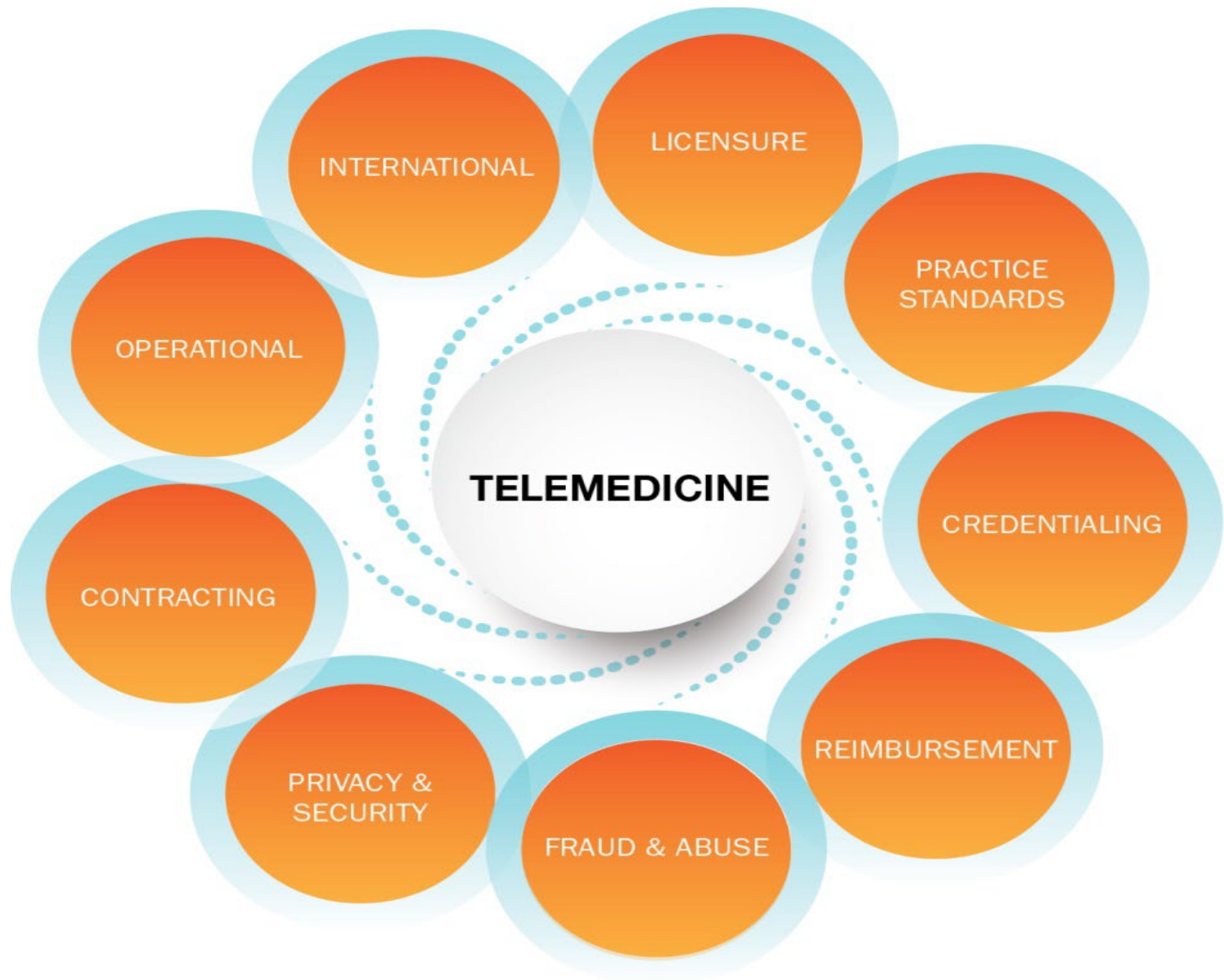
- Historical Telehealth Landscape
- COVID-19 Temporary Flexibilities
- Fraud and Abuse Enforcement
- Digital Health Policy
- Q & A



Source: South Central Telehealth Resource Center

A stethoscope is positioned on a medical chart, which is partially visible in the background. A semi-transparent blue rectangular overlay covers the middle portion of the image, serving as a background for the title text. The stethoscope's chest piece is in the foreground, and its tubing extends towards the top right.

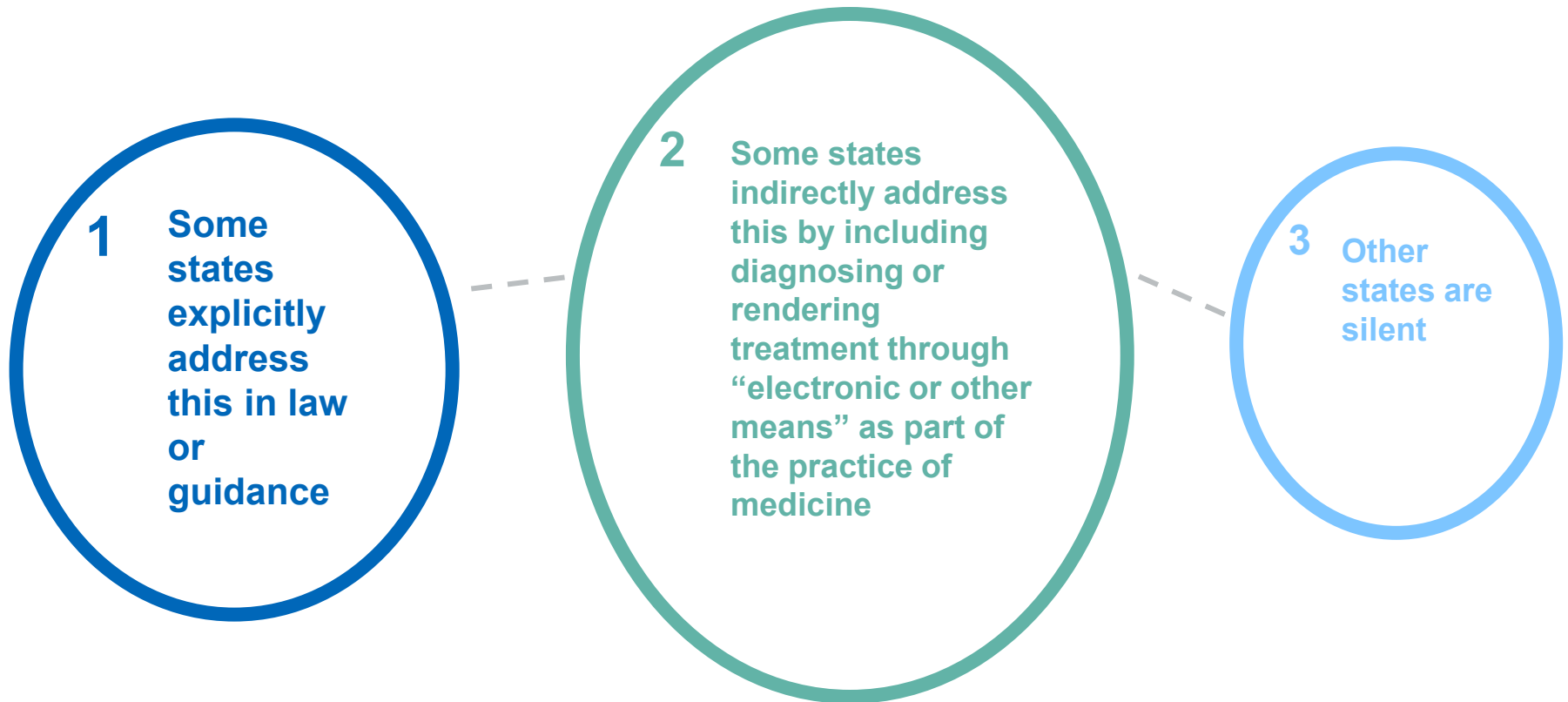
# Historical Telehealth Landscape





# Licensing

Regarding medical practice rules, it is generally accepted that the law that governs the consult is the state where the patient is located at the time of the consult. This is the locus of care.



# Notable License Exceptions

## Consultation

Allows unlicensed physician to practice medicine in peer to peer consultation with a physician licensed in the state

## Bordering State

Allows practice of medicine by out-of-state physicians who are licensed in a bordering state.

## Special License or Registration

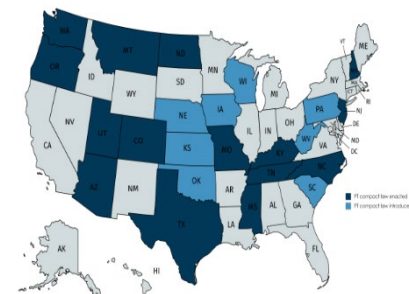
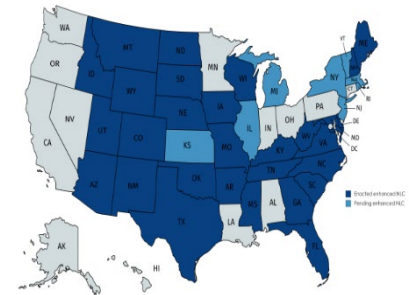
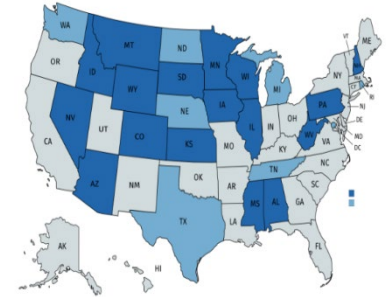
Abbreviated license or registration for telemedicine-only care

## Follow-up Care

Allows physician to provide follow-up care to his/her patient (e.g., post-operation)

## FSMB Compact

Allows reciprocity in participating Compact states.



# Telemedicine State Practice Standards

1

**New Patient vs.  
Established**

5

**Modality of  
Communication  
Technology**

9

**Patient Choice  
of Provider**

2

**Verify Patient  
Identity**

6

**Remote  
Prescribing**

10

**Disclosures**

3

**Originating Site  
Restrictions**

7

**Record-Keeping  
and Record-  
Sharing**

11

**Malpractice  
Insurance  
Considerations**

4

**Patient-Site  
Telepresenter**

8

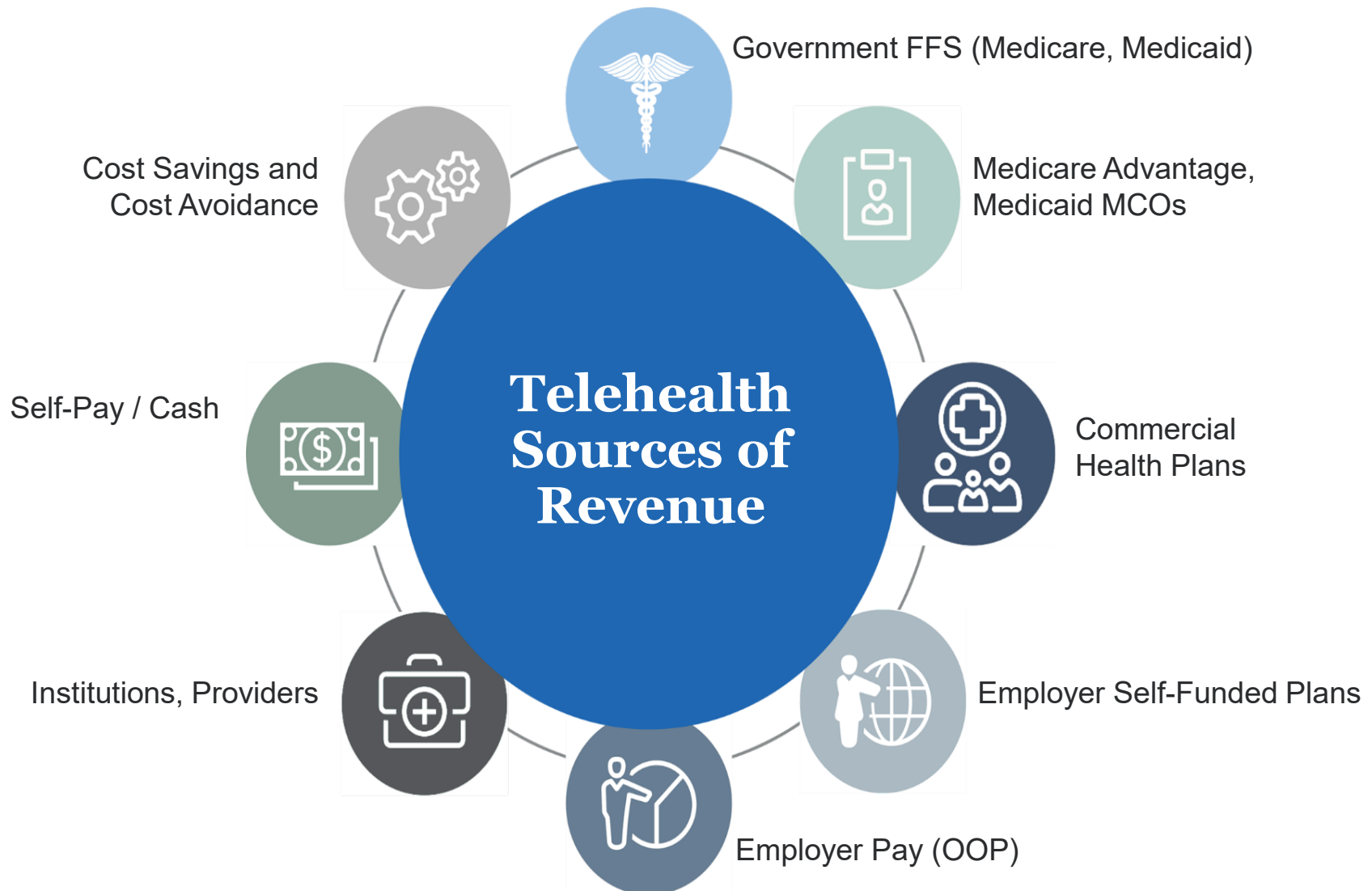
**Informed  
Consent**

12

**Credentialing**



# Telemedicine Payment



# Telehealth and Medicare – Before the COVID-19 PHE

1. **Geographic** - Patient in a qualifying rural area
2. **Location** - Patient at a qualifying facility (“originating site”)
3. **Provider** - Service provided by one of ten eligible professionals (“distant site practitioner”)
4. **Modality** - Technology is real-time audio-video (interactive audio and video telecommunications system that permits real-time communication between the beneficiary and the distant site provider)
5. **Service** - The service is among the list of CPT/HCPCS codes covered by Medicare

# COVID-19 Waivers

A person's hands are visible holding a tablet. The tablet screen is mostly obscured by a large, semi-transparent blue rectangular overlay that covers the upper and middle portions of the image. The background is a blurred indoor setting.

# Public Health Emergency

Declared Jan. 31,  
2020 (retro to  
Jan 27th)

Effective for 90  
days and can be  
renewed in  
additional 90-day  
increments

Secretary may also  
terminate the  
declaration whenever  
s/he determines that  
the PHE has ceased  
to exist

No requirement  
to give notice of  
intent to not  
renew the PHE

# Medicare Telehealth Waivers

## Location

- Removal of Geographic & Facility Requirements

## Modality

- Smartphones
- Audio-only allowed

## Reimbursement

- Will pay facility fee for telehealth services furnished at home at same rate as in person
- Report POS codes that would have been reported in person
- Modifier 95 applied to claims furnished via telehealth

## New CPT Codes

- Added over 90 new CPT codes for telehealth services

## Other

- Expanded types of professionals who can provide telehealth services
- Waived in-state licensure requirement (but state requirements still apply)
- Direct Supervision can be provided through real-time audio-video



# Other Federal Agency Waivers



No administrative sanctions for reducing or waiving cost-sharing obligations for telehealth services



Confirmed PHE exception for telemedicine prescribing of controlled substances



OCR will not penalize providers for using potentially non-HIPAA-compliant tools or for good faith use and disclosures of PHI



# Fraud & Abuse Enforcement

2022 NATIONAL  
**HEALTH CARE  
FRAUD**  
ENFORCEMENT ACTION



OIG.HHS.GOV

“Today’s enforcement action highlights our **DEDICATION TO FIGHTING HEALTH CARE FRAUD** and investigating individuals who target Medicare beneficiaries and steal from taxpayers for personal gain. HHS-OIG is proud to work alongside our law enforcement partners to disrupt fraud schemes that use the guise of telehealth to expand the reach of kickback schemes **DESIGNED TO CHEAT FEDERALLY FUNDED HEALTH CARE PROGRAMS.**”

**Christi A. Grimm**  
Inspector General, HHS-OIG





# NATIONWIDE BRACE SCAM

Scammers are contacting Medicare beneficiaries to offer “free or low-cost” orthotic braces. These fraudsters bill Medicare for medically unnecessary equipment using beneficiaries’ information. All beneficiaries across the country are potential targets in this scheme.

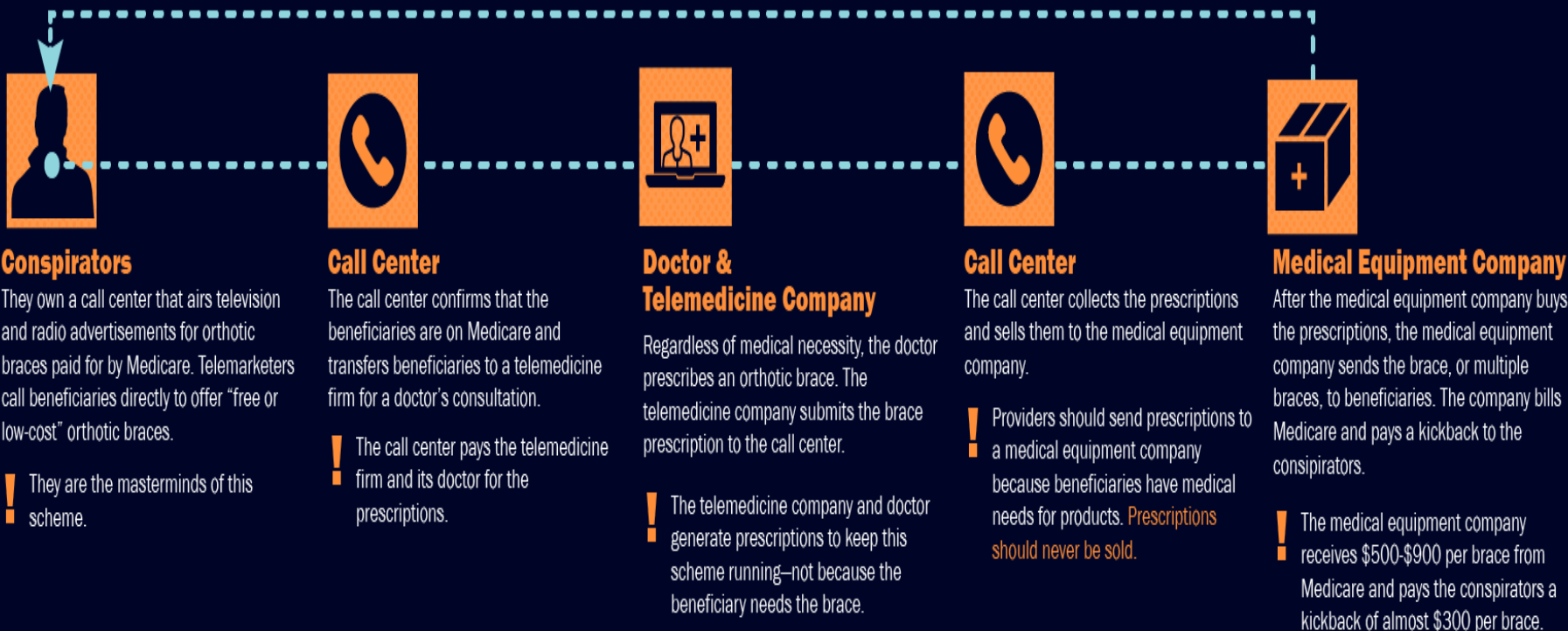
Learn More: [oig.hhs.gov/bracescam](https://oig.hhs.gov/bracescam)

Report Fraud: **1-800-HHS-TIPS** or  
[oig.hhs.gov/fraud/hotline](https://oig.hhs.gov/fraud/hotline)

U.S. Department of Health and Human Services  
**Office of Inspector General**



## The Alleged Scheme and Key Players



\* This alleged scheme is current as of April 2019.

# Genetic Testing **SCAM**

Scammers are offering Medicare beneficiaries “free” genetic testing or cheek swabs in order to obtain beneficiaries’ personal information for fraudulent purposes.



## **Recruiter**

The recruiter (who may also be called a marketer or telemarketer), targets the beneficiary to take a genetic test in person or by mail.



## **Doctor**

The doctor orders a test for the beneficiary even if it’s not medically necessary. The doctor gets a kickback from the recruiter for ordering the test.



## **Lab**

The lab runs the test and receives the reimbursement payment from Medicare. The lab shares the proceeds of that payment with the recruiter.



The alleged scheme is current as of September 2019.

**Learn More:** [oig.hhs.gov/geneticscam](https://oig.hhs.gov/geneticscam)  
**Report Fraud:** 1-800-HHS-TIPS or  
[oig.hhs.gov/fraud/hotline](https://oig.hhs.gov/fraud/hotline)



# TELEFRAUD SCHEME

1



Telemarketers contact beneficiaries and request health care information and health insurance numbers.

2



The purported telehealth company pays a medical provider to electronically sign orders/prescriptions in an online portal for unnecessary durable medical equipment, genetic testing, or prescription medications.

The medical provider typically does not interact with or treat the beneficiary.

3



A durable medical equipment company, laboratory, or pharmacy purchases the complete package that includes the beneficiary's information and medical provider's order/prescription, and uses the information to submit false claims for payment to Medicare, Medicaid, and other Federal health care programs.

**OIG.HHS.GOV**



# Post-COVID Digital Health Policy



# Expansion of Telehealth

- **State Law Changes**
- **2023 Physician Fee Schedule**
- **Legislative Fix – Pending Bills**
- **Stake Holder Efforts**

▪ *Telehealth Policy*



# Speaker Contact



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# Thank you

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